IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 5TH SEPTEMBER 2007 / 14TH BHADRA 1929

Tr.P(Crl.).No. 66 of 2007()

ST.1118/2006 of J.M.F.C.-I,THAMARASSERY

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PETITIONER:

ABRAHAM PHILIP, S/O.ABRAHAM,
AGED 49 YEARS, T.C.3/1913, 'IAKGNUS',
PATTAM PALACE P.O., THIRUVANANTHAPURAM.

BY ADV. SRI.V.VENUGOPALAN NAIR
SRI.C.UNNIKRISHNAN (KOLLAM)

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. BAIJU SAM SACHARIAH, S/O.SACHARIAH,
AGED 39 YEARS, PANDYALAKKAL HOUSE,
RAMROTH DESOM, KOZHIKODE TALUK,
KOZHIKODE DISTRICT.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS TRANSFER PETITION (CRIMINAL) HAVING COME UP FOR ADMISSION ON 05/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

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Tr.P(Crl) No.66 of 2007

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Dated this the 5th day of September, 2007

ORDER

The petitioner faces indictment in a prosecution under Section 138 of the Negotiable Instrument Act. That proceedings is between the petitioner and the brother of his divorced wife. The marital tie has been dissolved by divorce in 1996. The allegation is that a cheque was issued by the petitioner to the brother of his former wife in 2006. There is also a litigation between the present husband of his former wife and the father of the petitioner. The prosecution is initiated before the Judicial First Class Magistrate Court- Thamarassery. The petitioner was arrested and taken before the Magistrate. He has been released on bail.

2. The petitioner has come to this Court with a prayer that the said proceedings pending before the Judicial First Class Magistrate Court-Thamarassery may be transferred to any other Court of competent jurisdiction.

3. What is the reason? The learned counsel for the petitioner submits that the the petitioner apprehends threat to his life, if he were go to the Judicial First Class Magistrate Court- Thamarassery for the conduct of the case initiated against him. This is the sole ground on

which the prayer for transfer is founded. Has there been any previous incident of violence against the petitioner? If so, what action, if any, has been taken in respect of such alleged incident? There is no specific allegation of any such previous incident or any action taken by the petitioner against the said accused. The matter is pending before the Judicial First Class Magistrate Court- Thamarassery as S.T.1118/2006 and at this stage, I have no reason to direct the transfer on the grounds referred above.

4. Moreover, I must note that the prosecution is only under Section 138 of Negotiable Instrument Act. Personal appearance need not be insisted, unless there be valid and compelling reasons to justify such appearance. If the petitioner finds it difficult to appear before the Magistrate at Thamarassery, on the ground that he apprehends physical injury, it is certainly open to him to apply for exemption and get the case conducted through his counsel. Only if it is absolutely necessary for the progress of the case, personal appearance of the petitioner-accused need be insisted by the learned Magistrate.

I do not find any reason to direct transfer as prayed for. This petition is consequently dismissed but subject to the above observations.

(R.BASANT, JUDGE)

sj